IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6435 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANKUBEN KARSANBHAI KATARIA

Versus

STATE OF GUJARAT

Appearance:

Mr. H.R. Prajapati for MR SANJAY M AMIN for Petitioner

Mr. K.T. Dave, A.P.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 29/02/2000

ORAL JUDGEMENT

Heard learned Advocate Mr. H.R. Prajapti for the petitioner and learned AGP Mr. K.T.Dave for the respondents nos.1, 2 and 3.

1. The detention order dated 4-8-1999 passed by the respondent no.2-Commissioner of Police, Vadodara, against the petitioner-detenu in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution.

2. The grounds of detention served and supplied to the detenu under Sec.9(1) of "PASA", copy of which is produced at Annexure "B" inter alia indicate that the petitioner is alleged to have been involved in four prohibition cases registered at Makarpura & Prohibition Police Stations between the period 24-4-1998 and 9-2-1999. That in each case countrymade liquor was seized from the possession of the petitioner and all the cases are pending for trial in Court.

2.1 The grounds further indicate that three witnesses on assurance of their annonymity have given statements dated 17-7-1999, 18-7-1999 and 19-7-1999 wherein they have given information about the bootlegging activities of the petitioner and have narrated incidents alleged to have occurred on 29-6-1999, 21-5-1999 and 4-6-1999 respectively.

3. That in consideration of the aforesaid material, the detaining authority has come to the conclusion that the detenu is a " bootlegger" within the meaning of Sec.2(b) of "PASA". That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activity, the detention order is necessary, and hence, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It is contended at the Bar on behalf of the petitioner that the impugned order suffers from the vice of non application of mind inasmuch as the detaining authority has failed to consider the aspect of claiming cancellation of bail and there has been inordinate delay between the last date of criminal activity of the detenu and the date on which the impugned action is taken.

5. The last case registered against the petitioner vide CR no.65/99 was registered on 9-2-1999. That thereafter anonymous witnesses have given information on 17-7-1999, 18-7-1999 and 19-7-1999 respectively, however, the impugned order appears to have been passed on 4-8-1999 and there is no reasonable explanation in the

grounds of detention as to why action was delayed.

6. In the matter of PRADEEP NILKATNH PATURKAR VS. S. RAMAMURTHY & ORS (AIR 1994 SC 656) having followed the earlier decisions, the Supreme Court has held that if the delay in taking the impugned action from the last date of antisocial activity of the detenu is not sufficiently explained the order is vitiated and cannot be sustained. That the same proposition has been reiterated by this Court in the matter of ELESH PATEL VS.C.P. AHMEDABAD reported vide 1997(1) G.L.H.381.

7. It is also required to be noted that in all the cases, the petitioner was released on bail since 26-4-1998. However, the detaining authority has observed in paragraph 4 that he has not initiated the proceedings as the same is likely to consume considerable time. It is difficult to construe the said statement as having a rational conclusion connected with the facts involved in the matter.

8. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND ORS. 1995 (2) G.L.H. 1134) , the Division Bench of this Court has expressed the view that non consideration of less drastic remedy like cancellation of bail under Section 437(5), Cr.P.C. amounts to non application of mind vitiating the detention order. That the said view has been approved and endorsed in the proceedings of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram: C.K. Thakkar & A.L. Dave, JJ.).

8.1 As observed by the Division Bench of this Court in the above stated matter, the detaining authority is required to record his satisfaction that in spite of taking action for cancellation of bail, the proposed detenu is likely to continue on bail and also record the satisfaction that as per the antecedent history and propensity of the detenu, he is likely to indulge into antisocial activity.

9. In the instant case, both the elements are absent. The explanation stated by the detaining authority cannot be said to be proper or serious consideration of the said remedy. Hence, I am constrained to hold that the impugned order suffers from the vice of non application of mind on account of not resorting to remedy of claiming cancellation of bail as available under Section 437(5), CR.P.C. while passing the impugned order. The order is also bad on account of delayed action without any explanation.

9. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide the other contentions raised in the petition.

10. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 4-8-1999 passed by the respondent no.2 against the petitioner-detenu is hereby quashed and set aside. The petitioner-detenu-Smt. Kankuben Karsanbhai Kataria is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

(A.K.Trivedi,J.)

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